

Right of First Refusal of Employment Question

- 1) On page C-34 of the Draft RFP a chart of those positions that will be required to be present during the Phase-in Period is presented by the IRS. The answers to the questions (round 5) Q&A #5 indicates that the ATO will be required to propose the staffing for a phase-in period...as will the service provider. Q&A 21 indicates that the chart is to be applicable to each site.

Our question is...should the service provider (industry) win the contract, will the IRS release the current IRS employees that are scheduled to be released to acquire the positions (per the First Right of Refusal clause of the OMB A-76 Circular dated 29 May, 2003 page B-18) so that they may join the Service Providers phase-in staff, as proposed and as required by the contract in paragraph 3.11.1 of the contract that requires the contractor to provide his proposed staff for training during the 60 day phase-in period.

If the IRS does not release the current employees to join the service providers phase-in staff...the service provider could be found deficient during the phase-in period. Or, the service provider would be forced to hire a staff for the 60 day period only and at contract start release these temporary employees.

Similarly, should the ATO win the contract, the IRS would be required to hire temporary employees for either the ATO phase-in activities or to perform ongoing services.

In either event, the Government will be forced to spend money on temporary employees to fill positions during the phase-in period that are or will be filled by current Government employees exercising their right of first refusal. Such an expenditure could be avoided by requiring the successful offeror or ATO to hire new employees only where incumbent Government employees choose to not exercise the right of first refusal.

Will the IRS consider revising their specification and make the requirement more realistic?

Answer: The timing of employee information to be supplied under the requirements of OMB Circular No. A-76 (revised) D. 6. f. (b), FAR 7.305(c) and FAR 52.207-3 "Right of First Refusal of Employment" is still subject to negotiations with the National Treasury Employees Union. However, the phase-in period has been extended to 146 days in order to assist the Service Provider (in the event of a private source award) with interviewing and consideration of impacted employees for any available positions under the awarded agreement.

In the event of an ATO award, the ATO would not be required to hire temporary staff. The requirement is to assure the ATO prices its phase-in personnel.